REVIEW

GLOBAL CHALLEGGES IN TAX ADMINISTRATION, edited by Rodney Fisher and Michael Walpole, Fiscal Publications, Birmingham, 2005, pp 342.

Review*

Australia is definitely not "down under" when it comes to taxes. This book is a collection of the most interesting papers from the *Sixth International Conference on Tax Administration* held in Sydney by the leading Australian tax research group - the Australian Taxation Studies Program (Atax), University of New South Wales in April 2004. The sub-title of the Conference was "Challenges of Globalising Tax Systems". This biannual conference traditionally attracts top tax administrations, academics and practitioners, not only from the Pacific countries, but from around the globe. This was not the first time that Croatia was presented – at this Conference with as many as three papers, one of them being selected for the inclusion in this book.

The editors of the book are also closely connected to the Conference and to Atax. Rodney Fisher was the convener of this 6th Conference. Previously he was engaged as a Senior Lecturer at Atax and now is a Senior Manager with Ernst & Young. Michael Walpole is Associate Professor and Associate Director of Teaching at Atax. He has been a convener of three of the Atax conferences on Tax Administration. His research reputation in taxation, especially tax compliance costs, goes far beyond Australian borders resulting, among other things, in the position of founding co-editor of a new international tax journal – *eJournal of Tax Research*.

"This book raises cutting-edge issues in taxation law and administration. More than ever before, we can each profit from the experience of other jurisdictions and the new initiatives which are pursued elsewhere" writes Sir Anthony Mason, AC KBE, former Chief Justice of the High Court of Australia. The taxation issues in Australia, China, Croatia, France, Germany, Indonesia, Japan, The Netherlands, New Zealand, the UK and the USA as well as tax administration organization and related bodies such as ATO, the European Court of Justice, the EC, Inland Revenue, IRS, the OECD, the UN and the World Trade Organization are analysed and discussed in this book.

The selected papers (book chapters) are grouped into five parts: *Administration Challenges, Globalisation Challenges and Opportunities, Legal and Legislative Changes, Tax*

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System Design Challenges and Compliance Challenges. Although presented in the contents and in the editorial note, this division (the chapters classified in the parts) is not included in the book text. Neither do the above mentioned individual parts have separate titles in the book, nor there is any introductory text for each of the 5 items. This formal imperfection, however, does not at all reduce the quality of this book, or its individual chapters (papers).

The first part of the book – *Administration Challenges* – includes three chapters that indicate the presence of the highest tax administration officers/officials of Australia at the Conference. As expected, they offer (the first two of them), "a view from the top", as indicated even by the editors. The key word for this part of the book would be "tax authorities".

The first chapter by **Michael Carmody**, Commissioner of Taxation in Australia, is presented, as usual for state officials, more in the form of a speech then the real paper/book chapter. He discusses the development in ATO in the last two years (since the last conference) led by "optimizing collection" and "the community's confidence in the administration and the system". The formalized "business model" of ATO is presented, with emphasis on compliance management and anti-avoidance provisions.

David Vos, inaugural Inspector General of Taxation in Australia, by comparing the role of the ATO with the role of the inspector general of taxation, points out the reasons for establishing the latter institution. Since his most important tasks are to improve the administration of the tax laws for the benefit of all taxpayers, to provide independent advice to the government on the administration of the tax laws and to identify systemic issues in the administration of the tax laws, the second part of the paper is devoted to his observation of some fundamental features of the Australian tax system as well as challenges to ATA. He concludes that one of the more important challenges for him and to the tax administration is the need to develop structures and systems which can accommodate to the requirements of the vast majority of taxpayers for simple administration *and* the complexity required both to cope with the ever increasing complexity of tax itself and to ensure adequately that these systems also provide the functionality needed.

Philip Moss, Special Tax Advisor in the Commonwealth Ombudsman's office in Australia at that time, explains the concept of the tax system as community ownership, where the role of the Taxation Ombudsman is to provide the facility for the citizen to be able to complain about taxation decision to an official with an Ombudsman type function. His paper deals mostly with the development of the concept, starting with the historical background, pointing out the revolutionizing of administrative law in the seventies and laying stress on the development from the nineties on and the role of the Ombudsman, with the inclusion of the international comparison of the Ombudsman's tax function.

Although most of the conference papers dealt with globalisation in some way, the papers most directly concerned with this issue are grouped in the second part of the book – *Globalisation Challenges and Opportunities*. The key word for this part of the book would be "international taxation" from the point of view by lawyers.

It would seem appropriate to start with the paper of **John Prebble**, Professor and former Dean of Law at Victoria University, Wellington, New Zealand, however narrow

the topic might be. This thorough chapter (with a full twenty five subchapters) deals with double tax conventions, issues of trusts established in New Zealand or Australia, with resident trustees, foreign settlers and foreign-source income. Although "locally oriented" this paper fits perfectly in Sir Anthony Mason's comments about this book that "[more] than ever before, we can each profit from the experience of other jurisdictions".

David White, Professor from the same University and also Associate Director of its Centre for Accounting, Governance and Taxation Research, goes further and broader in the same topic of international taxation – he assesses New Zealand double tax treaty policy and practice. He discusses the possible influence of changes in the domestic income tax law on changes in double taxation treaties, his conclusion being relatively sceptical. The most interesting part for foreign readers would be the second subchapter, in which he discusses a multi-level model of international tax co-operation, indicating that tax treaties are not the only way governments can co-operate.

Philip Burgess, Associate Professor in the School of Law, University of New South Wales, Australia, deals with cross-border tax collection and enforcement. He points out that suitable machinery to permit the reciprocal enforcement of tax debts already exists, and that the main issue is the choice of the best method of achieving this. The author criticizes the OECD solution trough the re-drafted Article 27 of the Model Tax Treaty as paying insufficient regard to the protection of taxpayer rights.

Adrian Sawyer, a Senior Lecturer in Accountancy in the Department of Accountancy, Finance and Information System at the University of Canterbury, New Zealand, goes a step further in international tax cooperation, advocating an international (world) tax organisation. The first step in this direction, already proposed by a number of scholars, is some form of multilateral tax agreement/convention/treaty. Administering such an agreement would be greatly facilitated by an international organisation, such as the proposed World Tax Organisation. A step along this path would be to include a mutually agreeable process in the areas of binding rulings and APAs (advance pricing agreements).[1]

Yuri Grbich, Professor of Law and Foundation Director of Atax at the UNSW, in one of the most exhaustive book chapters, compares the tax decision-making in Europe and Australia. He criticises Australian tax judges for their actual daily decision-making being too conservative and formal. He concludes that despite the fact that the bodies entrusted with ensuring the enforcement of law have traditionally been judicial, globalisation and the arising complexities require more active intervention by administrations. He suggests that parallel to judicial reforms and the increase of real accountability for tax judges, Australia must work towards strengthening other delegated tax decision-making institutions. Such tax reform must draw on the track record of the EU, particularly the unique European Commission. Most interesting for international readers is the bulk of this paper that is devoted to EU taxation and decision making, especially tax integration in the EU and direct tax harmonisation.

[1] An advance pricing agreement (APA) is an advance agreement on transfer pricing methodologies entered into between a multinational taxpayer and at least one government's tax administration. It sets forth a methodology for evaluating whether transfer prices are arms length and will, therefore, be respected by the national tax administration.

Although most of the previous papers are concerned with legal and legislative topics, the third part of the book – *Legal and legislative challenges* - entails papers exclusively looking into, mostly domestic, legal and legislative challenges. The key word for this part of the book would be "core legal issues" - for lawyers only. The only exception could be the paper of Margaret McKerchar and Cynthia Coleman, which, due to its tax avoidance issue, could be recommended to a broader readership.

Rodney Fisher, one of the co-editors of the book, examines the scope for judicial review of tax decisions. The doctrine of the separation of powers assigns to the judiciary the task of judicial review of administrative decisions made by the executive arm of government. This can result in tension between the legislature/executive and the judiciary. Fisher's paper examines the manifestation of this tension in the approach by the courts to the interpretation and application of privative clauses in the area of taxation law. The paper outlines recent developments in the judicial consideration (reviewing and modifying) of earlier approaches in the applicati on of privative clauses in the field of migration law and explores whether this change in interpretation has potential repercussions for the interpretation and application of the privative clauses in the taxation statutes.

Sandra Eden, Senior Lecturer in the School of Law of Edinburgh University, examines judicial control of the UK tax authorities. By analysing the relevant cases, she comes to some general conclusions. There has been relatively little second-guessing of particular decisions, and the courts have been reluctant to substitute their views for those of the tax authorities. It could be concluded that the tax authorities have been afforded perhaps a surprisingly wide degree of discretion. Still, the author concludes that courts have marshalled the boundary rather effectively.

Margaret McKerchar, Associate Professor in Accounting and Taxation in the Faculty of Rural management at the University of Sydney and **Cynthia Coleman**[2], Associate Professor within the Economics and Business Faculty of the same University, ask themselves whether the Australian Taxation Office keeps pace with the changing nature of the taxpayer environment. This interesting paper is concerned with the topic of tax avoidance in the Australian tax system. In order to avoid the highest marginal tax rate of personal income tax (currently 47%) and so as to be taxed at the flat corporate tax rate (currently 30%), employees, where possible, prefer to work through corporate structure – very often as a trustee of a family trust. ATO has always had a negative attitude to these arrangements, litigated many cases under the general anti-avoidance provision and was often successful.

Natalie Lee, Senior Lecturer within the School of Law, University of Southampton, UK, explores the effects of the European Convention of Human Rights, which was in 2000 incorporated into the law of the UK, on tax policy and tax administration. She concludes that concerning the tax cases before the court since 2000, the taxpayers have enjoyed far fewer successes than other types of claimants particularly when the challenge is in respect of a statutory provision. She is also discusses some proposed changes in the tax policy (capital gains tax) that could theoretically be challenged as a breach of Convention, suggesting that any domestic court will be reluctant to arbitrate on matters of tax

[2] The editor of another famous (and older) taxation journal in Australia – Australian Tax Forum

policy and will formulate their decision on the basis of the wide margin of appreciation afforded to the Government. Also challenging discretionary action taken by the Revenue may also prove to be either difficult or impossible.

Although one could expect that the fourth part of the book – *Tax System Design Challenges* - would deal with traditional equity and efficiency (neutrality, tax incentives) aspects of tax design, the Australian tax literature has historically been occupied with simplification issues and efficiency from the point of view of tax administration and tax compliance costs. So, the first two papers could be also classified into the fifth part, since they are both concerned with the problem of lowering tax compliance costs. The same could be said even for the third paper, although last two papers are even more concerned with the more "technical" questions of tax filing and collection. It is hard to form the key word for this part of the book, but it could be "efficiency of the tax collection process".

Paul Drum, Senior Tax Counsel for CPA Australia, reviews possible changes in Australian personal income tax that would mitigate some of its biggest disadvantages, such as high top marginal rate, which affects incomes that are only a little bit above average, high effective marginal tax rates and taxation compliance costs. Finally, he suggests different measures to reduce the number of individuals who need to submit annual tax returns. He proposes that taxpayers who only have incomes derived from salary and wages and no other deductions or tax offsets should have the option not to file a tax return. Introducing a final withholding tax could be a good solution for interest and dividends. The author also advocates the replacement of the current work-related expense deduction with a 300AUD tax rebate. He is also moots a tax-free amount for certain capital gains.

Chris Evans[3], Professor and Director of Atax, is also concerned with the problem of the taxation compliance costs of individuals, i.e., the fact that virtually all personal income tax payers are required to file an income tax return in Australia. He refers to the trend in other countries towards reduced annual filing obligations for personal (non-business) taxpayers, with special reference to New Zealand. So, he also champions the reduction of the number of personal (non-business) taxpayers who are obliged to file a return on an annual basis, as well as the abolition of work related expenses, a more comprehensive and accurate tax withholding regime and more consolidated schedule of tax rates.

Liane Turner and **Christina Apelt,** Research Officers with the ATO, apply a new conceptual framework to describe and explain factors enabling the diffusion, adoption and operationalisation of electronic lodgement service (ELS) within Australia. This is achieved by examining the electronic lodgement modalities implemented by the ATO. Their analysis includes international comparisons. This study contributes to existing knowledge by demonstrating that the path of entry of ELS and e-tax into the Australian tax policy domain unfolded via government channels. This study shows, in fact, that Australia was a world leader in the implementation of ELS.

Jacqueline McManus, Senior Lecturer at Atax, examines the impact of the design of VAT on the organisation of its administration.[4] She sets out the pros and cons of joint

[3] Also one of the "fathers" of tax compliance costs research in Australia with world-wide reputation in this field

[4] It must be born in mind, that Australia recently introduced VAT, which is called goods and services tax (GST) there. So, this is very topical issue for that country.

administration of VAT and income tax, in particular the impact of the design features of a VAT on joint tax administration. Although joint administration is favoured and usually recommended in the event of the introduction of a VAT, the author is quite suspicious. She points out that the administrators should take note that VAT design features require specialist resources and specific functions within the joint or merged administration. She is convinced that, due to these specific design features of VAT, optimum compliance and revenue collections of VAT will not be achieved by an entirely joint administration of VAT and income tax.

The last part of the book, with six papers, – *Compliance Challenges* – points out again the importance and top level of tax compliance research in Australia, attracting a number of world-wide specialists for that area. The key word for this part of the book is definitely "tax compliance".

The first chapter, which could be also included in the previous part, is occupied again with the Internet filing of tax returns. **Ann Hansford**, Senior Lecturer in Taxation at Bristol Business School, UK, **Catherine Pilkington**, Senior Lecturer in Taxation at the University of Central Lancashire, UK and **Andrew Lymer**, Senior Lecturer in Accounting and Taxation at the Birmingham Business School, UK consider the impact of FBI (Filing by Internet) in UK on taxpayer compliance and analyse the proposals for changes made by tax advisers involved in FBI. They point out the need to review the barriers to the adoption of FBI (security issues, electronic signatures, filing of supplementary information) and show that tax advisers are reluctant to adopt FBI. One of the reasons for that is that the perceived costs savings made by the Inland Revenue were not being passed on to tax advisers, who were incurring non-recoverable costs as a result of introducing FBI.

As many as five researchers, one of them being co-editor of this book (**Michael Walpole),**[5] have coped with the psychological costs of tax compliance. The research team has undertaken experiments in order to compare the relative psychological costs incurred by taxpayers when reading and applying the Income Tax Assessment Act (1936 and 1997). Their preliminary results suggests that the redrafted ("simplified") Income Tax Assessment Act 1997 is perceived by users as easier to use and causes less stress than the Income Tax Assessment Act 1936. This supports the expectation that simplified tax legislation may reduce tax compliance costs. However, despite that, the psychological costs of tax compliance have not changed significantly.

Binh Tran-Nam,[6] Associate Professor at Atax and **John Glover,** Associate Professor of Law at Monash University, Melbourne, are concerned with the compliance costs of the GST (VAT – see footnote 4) newly introduced in Australia to small business. The authors point out that, despite the Government's repeated claims, this tax has substantially raised the operating costs of the tax system, particularly the compliance costs for small business. They support their statement with quantitative measurement of the rise in costs.

[5] Robin Woellner (Professor of Law and Dean of the College of Law and Business, University of Western Sydney), Cynthia Coleman (see above), Margare McKerchar (see above), Michael Walpole (see above) and Julie Zetler (Senior Lecturer, Department of Business Law, Macquarie University, Sydney).

[6] Also one of the "fathers" of tax compliance costs research in Australia with world-wide reputation in this field and founding co-editor of new international tax journal – eJournal of Tax Research

They suggest implementing the changes proposed by business taxpayers, tax practitioners and tax experts in order to improve the simplicity of the tax system.

Three U.S. professors - **Stewart Karlinsky,** Professor of Taxation at San Jose State University and Executive Director of Tax Policy Institute, **Hughlene Burton** and **Cynthia Blanthorne,** both Associate Professors in the Belk College of Business**,** University of North Caroline, measure the perceptions of U.S. citizens as to the severity of tax evasion relative to other offences (crimes and violations). If tax evasion is not viewed as a serious offence, it may somewhat explain the degree of non-compliance with the tax laws (underreporting). The results of their study indicate that people do not perceive tax evasion as a serious crime. It is considered to be less serious than the white collar crimes of accounting fraud and violation of child labour laws. The authors also found out that offences involving victims are perceived as more serious than victimless crimes. This implies that, if tax evasion could be personalised more, then the perception of its gravity might be increased.

The research on the evolution and size of the informal economy and tax evasion in Croatia, presented by **Katarina Ott,** director of the Institute of Public Finance and Associate Professor at the Faculty of Economics, University of Zagreb, Croatia, is far from unfamiliar to the Croatian public. The research compares the results of two large-scale surveys covering the first and second half of the 1990s. These surveys used different measurement methods. The evidence suggests that the size of the informal economy and the extent of tax evasion declined in Croatia in the second half of the 1990s. As the process of transition goes on, one can expect a reduction of moonlighting and an increase in the amount of underreporting. Furthermore, the extent of informal activity seems to be inversely related to the speed of transition and privatisation in particular. The paper also advocates more simple and neutral tax system and the improvement of the efficacy of the tax authorities.

Shirley Carr and **Carrol Chan,** both lecturers at Massey University, New Zealand, investigate employers' perceptions of fringe benefit tax (FBT)[7] in New Zealand. They conclude that the employee rather than employer should pay the tax. The evidence also suggests that nearly 50% of the respondents did not change their remuneration packages at all when FBT was introduced, since many in-kind benefits are provided for business reasons which are not necessarily tax-related. The findings of the survey also support claims that FBT compliance costs are high.

[7] Unlike in European countries, fringe benefits are not included in the tax base of income tax and are taxed separately in New Zealand and Australia. Furthermore, this fringe benefit tax is levied on employers and not on employees.